

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

In re:

Chapter 11

BUFFETS, LLC,

Case No. 16-50557-rbk

(Joint Administration Pending)

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS  
PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION  
FINANCING (WHICH ARE IN EXCESS OF TEN (10) PAGES)**

Motions and orders pertaining to cash collateral and post-petition financing matters tend to be lengthy and complicated. Although the Court intends to read such motions and orders carefully, it will assist the Court if counsel will complete and file this checklist. All references are to the Bankruptcy Code (§) or Rules (R).

PLEASE NOTE:

“\*” Means generally not favored by Bankruptcy Courts in this District.

“\*\*” Means generally not favored by Bankruptcy Courts in this District without a reason and a time period for objections.

If your motion or order makes provision for any of the following, so indicate in the space provided:

**CERTIFICATE BY COUNSEL**

This is to certify that the following checklist fully responds to the Court’s inquiry concerning material terms of the motion and/or proposed order:

Yes, at Page/Exhibit  
Y means yes; N means no  
N/A means not applicable  
(Page Listing Optional)

1. **Identification of Proceeding:**

- (a) Preliminary or final motion/order ..... Preliminary
- (b) Continuing use of cash collateral (§ 363)..... Interim Order
- (c) New financing (§ 364)..... Interim Order
- (d) Combination of §§ 363 and 364 financing ..... Y
- (e) Emergency hearing (immediate and irreparable harm) ..... Motion

2. **Stipulations:**

- (a) Brief history of debtor's businesses and status of debtor's prior relationships with lender ..... Motion
- (b) Brief statement of purpose and necessity of financing ..... Motion
- (c) Brief statement of type of financing (i.e., accounts receivable, inventory) ..... Motion
- (d) Are lender's pre-petition security interest(s) and liens deemed valid, fully perfected and non-avoidable ..... N
- (i) Are there provisions to allow for objections to above?..... N/A
- (e) Is there a post-petition financing agreement between lender and debtor? ..... Y
- (i) If so, is agreement attached? ..... Y  
(or will be provided prior to the hearing)
- (f) If there is an agreement, are lender's post-petition security interests and liens deemed valid, fully perfected and non-avoidable? ..... Y (post-petition only)
- (g) Is lender ~~undersecured~~ or **oversecured**? ..... (post petition lender)  
(circle one)
- (h) Has lender's non-cash collateral been appraised? ..... N
- (i) Insert date of latest appraisal ..... N/A
- (i) Is debtor's proposed budget attached? ..... Y
- (j) Are all pre-petition loan documents identified? ..... N
- (k) Are pre-petition liens on single or multiple assets? (circle one) ..... Multiple
- (l) Are there pre-petition guaranties of debt? ..... Y
- (i) Limited or unlimited? (circle one) ..... Unlimited

3. **Grant of Liens.**

- (a) Do post-petition liens secure pre-petition debts? ..... N
- (b) Is there cross-collateralization? ..... Y
- (c) Is the priority of post-petition liens ~~equal to~~ or **higher than** existing liens? ..... Interim Order

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(Page Listing Optional)

- (d) Do post-petition liens have retroactive effect?..... N
- (e) Are there restrictions on granting further liens or  
liens of equal or higher priority?..... Y
- (f) Is lender given liens on claims under  
§§ 506(c), 544-50 and 522? ..... N
- (i) Are lender's attorneys fees to be paid? ..... Y
- (ii) Are debtor's attorneys' fees excepted from §506(c)? ..... N
- (g) Is lender given liens upon proceeds of causes of  
action under §§ 544, 547 and 548? ..... N

4. **Administrative Priority Claims:**

- (a) Is lender given an administrative priority? ..... Y
- (b) Is administrative priority higher than § 507(a)?..... Y
- (c) Is there a conversion of pre-petition secured claim  
to post-petition administrative claim by virtue of  
use of existing collateral ..... N

5. **Adequate Protection (§ 361):**

- (a) Is there post-petition debt service? ..... Y
- (b) Is there a replacement/additional 361(1) lien?  
(circle one or both) ..... N
- \*\* (c) Is the lender's claim given super-priority? ..... Y  
(§ 364(c) or (d)) [designate]..... Both
- (d) Are there guaranties? ..... N (but all Debtors are liable)
- (e) Is there adequate insurance coverage? ..... Y
- (f) Other .....

6. **Waiver/Release Claims v. Lender.**

- \*\* (a) Debtor waives or release claims against lender, including,  
but not limited to, claims under §§ 506(c), 544-550, 552,  
and 553 of the Code? ..... N
- \*\* (b) Does the debtor waive defenses to claim or liens  
of lender? ..... N

7. **Source of Post-Petition Financing (§ 364 Financing):**

- (a) Is the proposed lender also the pre-petition lender?..... Y (one of several)
- (b) New post-petition lender? ..... N
- (c) Is the lender an insider? ..... Y

8. **Modification of Stay:**

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- \*\* (a) Is any modified lift of stay allowed? .....N
- \*\* (b) Will the automatic stay be lifted to permit lender to  
exercise self-help upon default without further order? .....N
- (c) Are there any other remedies exercisable without  
further order of court? .....N
- (d) Is there a provision that any future modification of order shall  
not affect status of debtor's post-petition obligations  
to lender?.....Y

9. **Creditors' Committee:**

- (a) Has creditors' committee been appointed? .....N
- (b) Does creditors' committee approve of proposed  
financing?.....N/A

10. **Restrictions on Parties in Interest**

- \*\* (a) Is a plan proponent restricted in any manner, concerning  
modification of lender's rights, liens and/or causes? .....N
- \*\* (b) Is the debtor prohibited from seeking to enjoin the  
lender in pursuit of rights?.....N
- \*\* (c) Is any party in interest prohibited from seeking to  
modify this order? .....N
- (d) Is the entry of any order conditioned upon payment  
of debt to lender? .....N
- (e) Is the order binding on subsequent trustee on  
conversion? .....Y

11. **Nunc Pro Tunc**

- \*\* (a) Does any provision have retroactive effect? .....N

12. **Notice and Other Procedures.**

- (a) Is shortened notice requested?.....Y
- (b) Is notice requested to shortened list?.....Y
- (c) Is time to respond to be shortened? .....Y
- (d) If final order sought, have 15 days elapsed since service  
of motion pursuant to Rule 4001(b)(2)? .....N/A
- (e) If preliminary order sought, is cash collateral necessary  
to avoid immediate and irreparable harm to the estate  
pending a final hearing?.....Y
- (f) Is a Certificate of Conference included?.....N
- (g) Is a Certificate of Service included? .....Y
- (h) Is there verification of transmittal to U.S. Trustee

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- included pursuant to Rule 9034?.....In Cert of Service
- (i) Has an agreement been reached subsequent to filing motion? .....N
- (i) If so, has notice of the agreement been served pursuant to Rule 4001(d)(1)? .....N/A
- (ii) Is the agreement in settlement of motion pursuant to Rule 4001(d)(4)? .....N/A
- (iii) Does the motion afford reasonable notice of material provisions of agreement pursuant to Rule 4001(d)(4)? .....N/A
- (iv) Does the motion provide for opportunity for hearing pursuant to Rule 9014? .....N/A

Dated: March 8, 2016

Respectfully submitted,  
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